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NO. 93-1472

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1993

Wilburt A. Siegel, Petitioner,
vs.
JAMES ISLAND PUBLIC SERVICE DISTRICT; GEORGE W. FLYNN; GEORGE W. WITHAM; BARBARA M. LADSON; SYLVIA F. PETERS; JOHN B. BRYANT; NANCY H. HADLEY; RAY J. PATTERSON, JR., constituting the membership of the Commissioners of the James Island Public Service District; ROBERT E. WELCH, Manager, James Island Public Service District; EDWIN B. QUINN, Wastewater Superintendent, James Island Public Service District; SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING; COUNTY OF CHARLESTON; WILLIAM T. HOWELL, Judge; J. ALTON CANNON, JR., Sheriff, Charleston County; ROBERT MILLER, Undersheriff, Charleston County; THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS; PARKER EVATT, Commissioner, South Carolina Department of Corrections; P. DOUGLAS TAYLOR, Warden, Lieber Correctional Institution,
Respondents,

On Petition For A Writ of Certiorari To
The United States Court Of Appeals
For The Fourth Circuit

Siegel's Reply Brief to Opposition of: Respondents: SINKLER & BOYD, P.A.; THOMAS C. HILDEBRAND, JR.; V. CLAIR ALLEN; STEPHEN E. DARLING.

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20pp

REPLY TO QUESTION

This Court Should Grant My Petition To Resolve The Question Whether A Citizen of South Carolina Can Be Wrongfully Incarcerated In a State Penitentiary's Maximum Security Cell With The Willful Participation And Advise Of The Sinkler Firm And Their Attorneys, In Violation Of The United States Constitution's Amendment V and XIV; When Their Actions Were Under Color Of State Law, And The "Law" They Themselves Made; Therefore They Are Liable Under 42 U.S.C. §1983.

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April 4, 1994 the Brief of Respondents Sinkler & Boyd, P.A., Thomas C. Hildebrand, Jr., V. Clair Allen and Stephen E. Darling in opposition to my Petition was received.

In reply I humbly pray this Court will grant my petition for writ of certiorari as this "Sewergate" is a novel issue, one where there is no certainty or stability in the law, as public policy/police power are without bounds.

The full record in the lower court shows the privately retained law firm's repeated actions in and out of criminal and civil courts does constitute action taken under color of state law for purposes of 42 U.S.C. §1983; as we are supposed to be a Nation of laws, not of men.

I was not guilty of the evils which menace the health, safety, morals and welfare of the people; yet incarcerated.

OPINIONS AND ORDERS BELOW

Appendix "A", Pet. Pg. 1-A - 5-A:

The United States Court of Appeals for the Fourth Circuit accepted the reasoning of the Charleston, South Carolina District Court to dismiss all defendants in this civil rights case, where I was wrongfully incarcerated in a State Prison for the crime of not being able to connect to a crushed-full-of-roots sewerline, improperly installed in the state highway drainage ditch-17" cover.

Appendix "B", Pet. Pg. 6-A - 9-A:

The Order of the South Carolina District Court at Charleston accepted the recommendation of the Magistrate Judge in dismissing all defendants.

Appendix "C", Pet. Pg. 10-A - 48-A:

The Charleston South Carolina Magistrate Judge's Report and Recommendation dismissing all defendants prior to discovery and trial by jury.

JURISDICTION

My appreciation to the Respondents for calling attention to my error in stating 28 U.S.C. §1257(3), rather than 28 U.S.C. §1254: Courts of appeals; certiorari; certified questions:

> Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:
>
> (1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

This case of threats, multiple arrest warrants, court cases, wrongful incarceration and $100/day/fine/lien on property for the infamous "crime" of not being able to connect to an improperly installed sewerline is such a departure from the accepted and usual course of judicial proceedings that the entire facts of this "Sewergate" cries out for the attention of this Honorable Court.

STATUTORY PROVISIONS INVOLVED

Section 42 U.S.C. §1983 provides in pertinent part:

> "Every person who, under color of any statute, ordinance, regulation, custom, or usage of any state or territory or the District of Columbia, subjects or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws shall be liable to the party injured in action at law, suit in equity, or proper proceeding for redress."

STATEMENT OF THE CASE

In 1979 I paid the required permit to become one of the first customers of the Respondent's "client" the James Island Public Service District's waste-water collection system.

I was provided an improper sewerline. Yet, threatening letters, criminal arrest warrants, civil case on the same crushed sewerline continued.

SUMMARY OF THE ARGUMENT

Intentional deprivation of civil rights applies to every citizen in this Nation, including the above respondents who are charged with knowledge of the law; they were prosecutors in both the criminal and civil courts.

The decision below should be reversed, discovery permitted, trial by jury should be allowed as an important question remains unanswered as they were more than "privately retained counsel for the purpose of initiating certain legal proceedings in South Carolina state court".

The facts are clear that the law firm and its attorneys were acting under color of State Law for the purposes of my 42 U.S.C. §1983 action for their constant participation in seeking my incarceration over the years.

They succeeded January 11, 1989.

ARGUMENT

This Court Should Grant My Petition To Resolve The Question Whether A Citizen of South Carolina Can Be Wrongfully Incarcerated In a State Penitentiary's Maximum Security Cell With The Willful Participation And Advise Of The Sinkler Firm And Their Attorneys, In Violation Of The United States Constitution's Amendment V and XIV; When Their Actions Were Under Color Of State Law, And The "Law" They Themselves Made; Therefore They Are Liable Under 42 U.S.C. §1983.

The Respondents Sinkler & Boyd, P.A. and their attorneys highlight why this Court should grant my petition.

Respondents' STATEMENT OF THE CASE (Brief in Opposition Pg. 5 and 6) speaks of the decade long attempt by the "District" to have me connect to the District's sewer system as required by the District's Wastewater Collection Regulation passed March 26, 1979. Above Respondents promulgated the Resolution themselves.

The Respondents knew their own case law of RUGGLES VS PADGETT, 240 S.C. 494, 126 S.E. 2d 553 (1962) concerned sewers, just one year following the creation of the James Island Public Service District, clearly states:

> "...cannot extend in such a manner as to provide authorization for special ordinances of a penal nature".

That Wastewater Use and Rate Resolution was so powerful to be used to obtain illegal arrest warrants, with 10 days in jail or $25.00 day fine for each day failed to connect. The warrants were declared unconstitutional, my criminal record was ordered expunged.

The Respondents proceeded again with their powerful Resolution - this time to civil court, seeking a mandatory injunction - when all the time they were fully aware the sewerline was crushed and unsuitable for any purpose, let alone the removal of raw sewage.

July 6, 1988, 15 months after their ill-gotten ORDER, attorney offered CASH if Mr. and Mrs. Siegel would sign away any and all past, present and future claims against the District, agents, employees, servants, etc. KEEP SECRET.

Constitutional rights are virtually meaningless if such a case as this is allowed to be plowed under when the magnitude of the mistakes of the Respondents dilutes the professional responsibility of attorneys in America.

The actions of the Respondents cannot be sustained on the basis they are only privately retained attorneys, the facts prove otherwise.

Federal agencies provided the bulk of the grants and loans for the system.

The Farmers Home Administration (USDA) in Columbia, S. C. provided a "DECLINATION FORM" that is applicable throughout the United States.

This Court could search every law library in America and never find a case whereby a citizen expected and paid for a safe-proper sewerline but was provided 4" Polyvinyl Chloride Pipe (PVC), manufactured by CERTAINTEED CORP., Type PSM, 12454B, SDR 35-Sewer ASTM-D-3034, MTVL-S5 in the bottom of an active state highway drainage ditch, installed without proper bedding or proper cover (17") and only a breath below the City Waterline that serves this entire community; violating DEHEC's rule.

The Engineer at the CERTAINTEED CORP. said the installation was wrong, the PVC will "flex" and will become unserviceable for any purpose. It did.

Only when we became informed - took pictures of the plugged sewerline at the manhole to the District Officals and asked for a "proper sewerline".

Then the Respondents served a RULE

TO SHOW CAUSE, with an UNSIGNED ORDER; why we were not connected to the crushed-full-of-roots sewerline.

Respondents cite some twenty-two (22) cases they claim are applicable as the authority for their willful participation in providing wrong information/advise to their "clients", the James Island Public Service District Commissioners and employees; by with-holding the truth from the many Courts when they represented their "clients".

Respondents do not attempt to defend their wrongful participation in providing misinformation/advise to the Federal Agencies (USDA), the District, the Court(s) and the citizens; such as:

1. January 25, 1978:

The Sinkler Firm informed the Farmers Home Administration, who provided loans and grants, along with the Environmental Protection Agency, for the sewerline:

> "...the District has the authority, pursuant to Section 6-11-1230, South Carolina Code of Laws, 1976, as amended, to prescribe and enforce regulations requiring all persons to whom it may be available to make use of any sewer system which the District shall from time to time operate".

2. April 03, 1979:

The Sinkler Firm recorded the District's Wastewater Use and Rate Resolution (they promulgated) at the RMC Office (BK T118, PG 219) and copies of the Resolution were sold to the District citizens as the public policy regarding penalties:

ARTICLE VIII PENALTIES

> Section 8.02 - Failure to comply with this resolution shall subject the person to a penalty of not less than $100 per day and payment of all damages incurred by the District's sewer system as a result of non-compliance.

3. June 25, 1979:

18 months before required time to connect to the public sewer system I paid the permit and tap-in fee to become

one of the first customers of the James Island Public Service District's Waste-water Collection System; I was unaware it was "mandatory"; still waiting for a proper sewerline.

4. March 18, 1980:

Bradford Avenue was sewered on West Side in the Street - except in front of 1058 Bradford Avenue. I sought a proper sewerline connection from that date to this...I failed...legal action in criminal and civil courts continued.

5. January 11, 1989:

The very afternoon I was behind maximum security bars at the Lieber State Prison the Sinkler law firm, out of unknown hundreds, filed six (6) cases against homeowners who had not paid their tap-in fee, nor connected to a proper sewer-line;...they used me as their "whipping boy" and took advantage of the publicity they generated...Prison Inmate #153926!

The Respondents have the power and authority to make: - white, black; black, white; the crooked, straight; straight, crooked; would that all of us could: Example:

Eight years of misrepresentation to the citizens, the Criminal and Civil Court(s); obtaining illegal order; then admitting all Courts lacked Jurisdiction they "RETROACTIVELY CLEARED THE AIR ON LAW...TO ENSURE VALIDITY OF PAST RESOLUTIONS"...June 8 and 22, 1987:

> AN ORDINANCE RATIFYING PAST ACTIONS OF THE JAMES ISLAND PUBLIC SERVICE DISTRICT COMMISSION
>
> WHEREAS, the Rules of Procedure at Rule 20(i) provide that, "All actions of the Commission shall be taken by Resolution, except that any action of the Commission which provides for raising revenue, appropriating funds, or incurring indebtedness ... shall be by ordinance..."; and
>
> WHEREAS, certain resolutions have been adopted which provide for raising revenue, appropriating funds,

> incurring indebtedness, or providing a penalty or establishing a rule or regulation for the violation of which a penalty is imposed, and inasmuch as the Commission is now minded to affirm this action previously taken by resolution by adoption of this Ordinance:
>
> NOW THEREFORE, BE IT ORDAINED that all action taken by resolution heretofore for said purposes are hereby affirmed.

August 21, 1987 the Respondents filed another RESOLUTION (B168-Pg779) amending portion of the March 26, 1979 Resolution:

Section 8.02 is amended by deletion of the phrase $100.00 and the substitution of the phrase $25.00.

Section 8.03 is added - Any owner who willfully fails or refuses to comply with this resolution...shall be subject to a civil penalty not to exceed Two Thousand and No/100 ($2,000.00) Dollars per day for each day of violation.

What next? There are no bounds.

I believe the case of LUGAR VS EDMONDSON OIL CO., etal (457 US 922, 73 L Ed 2d 482, 102 S Ct 2744) (1982) is applicable and describes the actions under color of state law by the Respondents:

Page 485:

> "This case concerns the relationship between the requirement of "state action" to establish a violation of the Fourteenth Amendment, and the requirement of action "under color of state law" to establish a right to recover a remedy for deprivation of constitutional rights when the deprivation takes place "under color of any statute, ordinance, regulation, custom, or usage" of a State".

Page 498:

> "Private persons, jointly engaged with state officials in the prohibited action, are acting "under color of law for purposes of the statute. To act "under color" of law does not require that the accused be an officer of the State. It is enough that he is a willful participant in joint activity with the State or its agents".

CONCLUSION

From the facts before this Court it is clear the Respondents (jointly and/or separately) have and will continue to misrepresent and abuse the Constitution.

I was forced to practice "CAVEAT EMPTOR", which under the foreseeability of a lay person, following knowledgeable persons' advise and common sense, was a compelling necessity; truth was proven: ...a crushed-abandoned sewerline.

My prayer is this Honorable Court will grant my petition for a writ of certiorari as the lower court decided incorrectly in dismissing all Respondents, prior to discovery, when they are liable under 42 USC §1983. (Amend. XIV).

Submitted in Respect for the Laws of this Nation,

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April 11th, 1994